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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,518	10/12/2001	Carlos M. Collazo	020897-000120US	2622
20350	7590	01/05/2005	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			OPIE, GEORGE L	
		ART UNIT	PAPER NUMBER	
		2126		

DATE MAILED: 01/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/976,518 Examiner	Collazo	
	George L. Opie	Art Unit	2151

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) All b) Some * c) None of the CERTIFIED copies of the priority documents have been:
 1. received.
 2. received in Application No. (Series Code / Serial Number) _____.
 3. received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- | | |
|--|--|
| 14) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 17) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 15) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 18) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 16) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) dated <u>02/01/02</u> and <u>08/27/02</u> . | 19) <input checked="" type="checkbox"/> Other: Text Docs for USP6,393,455 and USP6,301,615 |

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DETAILED ACTION

1. Request for copy of Applicant's response on floppy disk:

Please help expedite the prosecution of this application by including, along with your amendment response in paper form, an electronic file copy in WordPerfect, Microsoft Word, or in ASCII text format on a 3½ inch IBM format floppy disk.

Please include all pending claims along with your responsive remarks. Only the paper copy will be entered -- your floppy disk file will be considered a duplicate copy. Signatures are not required on the disk copy. The floppy disk copy is not mandatory, however, it will help expedite the processing of your application. Your cooperation is appreciated.

2. Applicant should supply updates on the related Application information

The cross-referenced Application information must accurately reflect the relevant status of the related cases. Applicant should carefully review the related applications and provide appropriate amendments to reflect the current information on each pending patent application.

3. The U.S. Patents used in the art rejections below have been provided as text documents which correspond to the U.S. Patents. The relevant portions of the text documents are cited according to page and line numbers in the art rejections below. For the convenience of Applicant, the cited sections are highlighted in the *text documents*.

4. Claim Rejections - 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Eilert et al. (U.S. Patent 6,393,455) in view of Kutcher (U.S. Patent 6,301,615).

As to claim 1, Eilert teaches a method for monitoring the performance of a digital networked system (performance data is employed to dynamically manage ...

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multisystem-wide goals, p3 47-55) wherein the system includes first and second platforms (systems 100-A, 100-B, p4 1-9) the method comprising

generating a first value indicating a characteristic of operation of the first platform (local performance index 152 ... on the local system, p5 41-50)

transferring the first value to the second platform (sending the local performance data to at least one other system of the multiple data processing systems, abstract).

Eilert does not explicitly disclose the additional limitations detailed below.

Kutcher teaches obtaining a second value indicating a characteristic of operation of the second platform (obtain certain performance data on computer 31, p6 27-40) and

combining the first and second values into a composite value (adapted ... from selected computers ... associated data in the form of a bar graph, p9 7-25) by adjusting one of the first or second values (output values may be manipulated mathematically, p8 17-20) to account for a difference in operation characteristics between the first and second platforms (values for parameters which are not included in the output may be calculated, Id.).

It would have been obvious to combine Kutcher's teachings with Eilert because the performance information available from various systems may not be congruous, however, the correlative monitor mechanism taught by Kutcher converts the "data into a standardized format", p7 38-47 that can readily be utilized in managing the heterogenous network to realize optimal operations.

As to claim 2, Kutcher teaches the "computers in the network may be of a number of different types", p4 35-43 which corresponds to the limitation of differences in the use of interrupts in processors in the first and second platforms.

As to claims 3-4, Kutcher (p6 40-55) teaches the "UNIX environment" which employs certain "thread" management that would differ from other OS types.

As to claim 5, Eilert teaches the difference in operation includes differences in memory management in the first and second platforms (each computer has its own OS, such as the Multiple Virtual Storage system, p4 1-9).

As to claims 6-8, Kutcher teaches the first and second platforms use different types of operating systems and CPUs (computers in the network may be of a number of different types ... run UNIX, DOS, or other operating systems, p4 35-43).

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6. The prior art of record and not relied upon is considered pertinent to the applicant's disclosure. Specifically, the below reference(s) will also have relevancy to one or more elements of the Applicant's claimed invention as follows:

U.S. Patent No. 6,714,976 to Wilson et al. which teaches monitoring agents for system analysis in a heterogeneous network;

U.S. Patent No. 6,339,750 to Hoyer et al. which teaches the platform-independent monitoring tool;

U.S. Patent No. 5,949,976 to Chappelle which teaches the collection of diverse system statistics parsed into one composite; and,

U.S. Patent No. 5,375,199 to Harrow et al. which teaches the performance monitoring-data adjustment.

7. Contact Information:

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

Status information for published applications may be obtained from either Private-PAIR or Public-PAIR.

Status information for unpublished applications is available through Private-PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

All responses sent by U.S. Mail should be mailed to:

Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450

Hand-delivered responses should be brought to Crystal Park Two, 2021 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist). All hand-delivered responses will be handled and entered by the docketing personnel. Please do not hand deliver responses directly to the Examiner.

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The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

All OFFICIAL faxes will be handled and entered by the docketing personnel. The date of entry will correspond to the actual FAX reception date unless that date is a Saturday, Sunday, or a Federal Holiday within the District of Columbia, in which case the official date of receipt will be the next business day. The application file will be promptly forwarded to the Examiner unless the application file must be sent to another area of the Office, e.g., Finance Division for fee charging, etc.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist at (703) 305-9600.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Opie at (571) 272-3766 or via e-mail at George.Opie@uspto.gov. Internet e-mail should not be used where sensitive data will be exchanged or where there exists a possibility that sensitive data could be identified unless there is an express waiver of the confidentiality requirements under 35 U.S.C. 122 by the Applicant. Sensitive data includes confidential information related to patent applications.



SUE LAO
PRIMARY EXAMINER